



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG- 2011-0322]

RIN 1625-AA11

Regulated Navigation Area; Special Buzzards Bay Vessel

Regulation, Buzzards Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard is seeking comments and feedback on how best to enhance environmental protections and navigation safety outlined in the Special Buzzards Bay regulations. Specifically, the Coast Guard is seeking comments related to potential modifications of the current mandatory pilotage, escort tug, and Vessel Movement Reporting System (VMRS) Buzzards Bay requirements. The Coast Guard intends to use this input to propose new requirements on barges carrying 5,000 or more barrels of oil or other hazardous material.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

Requests for public meetings must be received by the Coast Guard on or before [INSERT DATE 21 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG-2011-0322. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Open Docket Folder" on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

- (1) Federal eRulemaking Portal:
<http://www.regulations.gov>.
- (2) Fax: (202) 493-2251.
- (3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal

holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. John J. Mauro, Waterways Management Division, U.S. Coast Guard First District, (617) 223-8355, email John.J.Mauro@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

AIS	Automatic Identification System
ANPRM	Advanced Notice of Proposed Rulemaking
AWO	American Waterways Operators
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
MOSPA	Massachusetts Oil Spill Prevention and Response Act
RCP	Responsible Carrier Program
RNA	Regulated Navigation Area
RA	Technical Risk Assessment
VMRS	Vessel Movement Reporting System

A. Executive Summary

Having weighed sometimes competing, but fundamentally important goals of environmental protection, concerns of

the local community, judicious use of public funds, restrained exercise of governmental regulation, facilitation of maritime commerce, and the standardization of safety regulations to avoid the fragmentation of regulatory regimes as a vessel transits across State or regional boundaries, we now seek to develop the next phase of comprehensive, balanced, and effective risk mitigation measures for Buzzards Bay. In particular, we want to update the following areas:

- Federal Pilotage. The Coast Guard believes laden tank barges transiting Buzzards Bay and carrying 5,000 or more barrels of oil or other hazardous material should be under the direction and control of an independent pilot regardless of whether those tank barges are single or double hull.
- Reporting and participation requirements of the VMRS Buzzards Bay. The Coast Guard believes amending the reporting and participation requirements of the VMRS Buzzards Bay to focus on that population of marine traffic that is laden with 5,000 or more barrels of oil or hazardous material, rather than all marine traffic, will enhance navigation safety and marine environmental protection. The intent is that the VMRS will still be manned on a 24x7 basis.

- Escort Tugs. The Coast Guard believes that under certain conditions (e.g. adverse weather, equipment limitations), double hull tank barges laden with 5,000 or more barrels of oil or hazardous material may require a tug escort. Single-hull tank barges will continue to require tug escorts under all circumstances. The Coast Guard notes that single hull tank barges are to be phased out January 1, 2015.

B. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment.

If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket

Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

C. Regulatory History and Information.

The Oil Pollution Act of 1990 (OPA 90) resulted in sweeping changes to the way oil and chemical transportation is conducted in the United States and throughout the world. This wide-ranging legislation required changes in virtually every aspect of the oil transportation industry. It involved new construction requirements, operational changes, response planning, licensing and manning mandates, and increased liability limits.

One significant pollution prevention standard in OPA 90 was the requirement that new tank barges and vessels be of double-hull construction. This provision also required that existing single-hull tank vessels (including barges) be retrofitted with a double hull or be phased out of operation entirely by January 1, 2015.

In 1998, in response to the January 1996 grounding of a single-hull tank barge off Moonstone Beach in Rhode Island that resulted in the release of approximately 880,000 gallons of #2 fuel oil, the Coast Guard established an RNA for the navigable waters of the First Coast Guard District. The RNA required any single-hull tank barge carrying petroleum as bulk cargo to be accompanied by an escort or assist tug unless towed by a tug equipped with twin-screws and two engines independent of each other and

capable of maintaining control of the tank barge in the event of a loss of one of the engines. It also stipulated that the escort or assist tug must be of sufficient capability to push or tow the tank barge promptly away from danger, and noted that the use of double-hull barges would remove the need for twin-screw, twin-engine tugs.

In response to the April 2003 grounding of the oil-laden barge B-120, which spilled approximately 98,000 gallons of No. 6 oil into Buzzards Bay, the Coast Guard undertook several studies and assessments, facilitated public discussion and ultimately implemented additional measures to improve navigation safety and protect the marine environment. Those measures included aids-to-navigation improvements and adoption of a voluntary recommended vessel route ("green lanes") in 2004, followed in 2007 by an updated RNA that contained requirements for escort tugs, federally licensed pilots, and creation of a VMRS; these enhancements were accompanied by widely expanded use of AIS. These changes were intended to reduce the navigation and environmental risks associated with tank barges laden with 5,000 or more barrels of petroleum product or other hazardous material.

Since 2007, the American Waterways Operators (AWO) Responsible Carrier Program (RCP) and the emerging Coast

Guard Towing Vessel Inspection Program have also served to reduce the likelihood of a material or human factor-related incident through vessel design and equipment standards, maintenance programs, staffing and certification programs, and compliance programs. For more information about the Coast Guard Towing Vessel Inspection Program, see the notice of proposed rulemaking published at 76 FR 49976. For more information about the AWO RCP, please see their website:

http://www.americanwaterways.com/commitment_safety/index.html.

D. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

In 2012, the Coast Guard and Massachusetts Department of Environmental Protection (Mass DEP) contracted with the Homeland Security Systems Engineering Development Institute (HS-SEDI) to provide a technical risk assessment (RA) and evaluation of measures to further reduce the level of potential risk of an oil spill in Buzzards Bay and the Cape Cod Canal (The RA will be provided in the docket).

The RA noted that double-hull tank barge requirements, which become fully effective in January 2015, have increasingly resulted in a significant reduction in the probability of an oil spill after a marine incident that culminated in a collision, allision, or grounding. The double hull requirement is noted as one of the primary contributors to risk reduction in Buzzards Bay.

The purpose of this proposed rulemaking is to provide for safety on the navigable waters in the regulated area.

E. Discussion of the Proposed Rule

The Coast Guard plans to use the results of this RA to evaluate the current level of federal regulation for Buzzards Bay and the Cape Cod Canal, and to determine whether changes are necessary to the VMRS, federal pilots, and/or tug escort system requirements in order to enhance safety in the marine environment and further reduce the potential for oil spills.

VMRS: We believe that the current regulations regarding the VMRS need revision, in that the majority of vessels currently monitored do not pose significant threats of pollution incidents. As currently written, the regulations direct watch stander focus from the higher risk population of oil and hazardous cargo laden tank barges to the much broader population of nearly ALL vessels

transiting in Buzzards Bay. In addition, in a comparative ranking of measures that would mitigate risk of an oil spill, the RA ranked the VMRS as one of the less effective options for preventing spills in Buzzards Bay. Therefore, we believe that the public would be best served if the VMRS were to focus specifically on the highest risk vessels that transit Buzzards Bay, (oil laden tank barges carrying 5,000 or more barrels of petroleum or other hazardous cargo) rather than ALL vessels.

Certain classes of vessels that frequent Buzzards Bay and are currently subject to the VMRS regulations, such as commercial fishing vessels and ferries, usually have a maximum capacity of 250 barrels of petroleum (primarily for fuel). This is well below the 5,000-barrel threshold considered to be a significant threat to the environment as defined in the 2007 regulations that implemented several navigation safety measures in Buzzards Bay and established the VMRS. (See 72 FR 50052.)

More than 20,000 commercial cargo vessels, tankers, tugs, barges, passenger vessels, and commercial fishing vessels pass through Buzzards Bay each year, along with thousands of smaller recreational boats. Of those, roughly 600 are tank barges laden with 5,000 or more barrels of petroleum or other hazardous material. When viewed in

combination with the increased measures already implemented along with those that we propose to put in place (including mandatory pilotage and condition-based tug escorts), the need for this additional control for tank barges laden with LESS than 5,000 barrels of petroleum or other hazardous material is no longer necessary and counter-productive as it diffuses watch stander attention from the higher risk target population.

Changing certain reporting and participation requirements of the Buzzards Bay VMRS to more closely focus monitoring activity on tank barges laden with 5,000 or more barrels of petroleum or other hazardous material would reduce reporting and participation on certain other classes of vessels, and permit marine controllers to focus more closely on the intended vessel population - tank barges laden with 5,000 or more barrels of petroleum product or other hazardous material - thereby reducing costs and improving navigation safety in Buzzards Bay.

What changes to the VMRS Buzzards Bay reporting and participation requirements are being considered by the Coast Guard?

Only tank barges laden with 5,000 or more barrels of petroleum or other hazardous material (both single hull and double hull) would be required to submit intentions

and position reports, and would be actively monitored as they transited through Buzzards Bay by the VMRS control center at the Cape Cod Canal. All other classes of vessels (such as ferries and commercial fishing vessels) that currently participate in the VMRS in either an "active" or "passive" capacity (per the VMRS User Manual) would be exempt from VMRS requirements and would not be actively monitored by the VMRS control center.

What would not change from the current VMRS Buzzards Bay reporting and participation requirements?

1. All vessels subject to the Bridge-To-Bridge Radiotelephone Act (i.e., primarily commercial vessels, including ferries and commercial fishing vessels, but not including recreational vessels) would still be required to monitor the VMRS radio frequency (channel 13 VHF-FM) at all times while operating within the VMRS area and respond promptly when hailed. (See Public Law 92-63; 85 Stat. 164; 33 USC 1201-1208; 33 CFR 26; 47 CFR 80.1001-80.1023; 46 CFR 7).
2. All vessels (including recreational vessels) would still be required to observe the Inland Rules of the Road (See Public Law 96-591; 94 Stat. 3415; 33 USC 2001-2038; 33 CFR 84-90).
3. All current reporting and participation requirements

for tank barges laden with 5,000 or more barrels of petroleum or other hazardous material will continue to be in effect.

4. VMRS Buzzards Bay Control will continue to be staffed and operated by U.S. Army Corps of Engineers, Cape Cod Canal.

Federal Pilots: The existing regulation states that each single hull tank barge transiting Buzzards Bay carrying 5,000 or more barrels of oil or other hazardous material must be under the direction and control of a pilot, who is not a member of the crew, operating under a valid, appropriately endorsed, Federal first class pilots license issued by the Coast Guard. Pilots are required to embark, direct, and control from the primary tug during transits of Buzzards Bay. The new regulation would extend this requirement to double hulls as well so that ALL oil or hazardous material-laden tank barges carrying 5,000 or more barrels of petroleum or other hazardous material would require pilots under all circumstances. The RA acknowledges that the independent pilotage requirement proposed provides additional decision support and experience on the tug when transiting Buzzards Bay, and significantly reduces the probability of a human factor-induced incident.

Escort Tugs: The Coast Guard is considering establishing certain thresholds, the exceedance of which would trigger the requirement for an escort tug for double-hull tank barges laden with 5,000 or more barrels of oil or hazardous material. These thresholds could be expressed in terms of meteorological conditions such as wind speed, wave height or visibility, or any other factors deemed appropriate, such as equipment limitations or defects. Specifically, the Coast Guard seeks the input of operators, pilots, industry associations, regulators, members of the Area Committee, and concerned citizens on the potential threshold conditions which would trigger the requirement of an escort tug for double-hull tank barges laden with 5,000 or more barrels of oil or hazardous material.

Once these threshold conditions are fixed, industry would have the flexibility to determine if the need to transit during these high-risk periods is offset by the additional cost of the escort, or if a delay in transit awaiting more favorable conditions is a better option.

In a comparative ranking of measures that would mitigate risk of an oil spill, the RA quotes a National Academy of Science study indicating that double hulls result in a 75 to 83 percent reduction in the probability of a spill, should a grounding, collision or allision

occur. Therefore, escort tugs would continue to accompany ALL single-hulled tank barges laden with 5,000 or more barrels of petroleum or other hazardous material through Buzzards Bay until single-hulled tank barges are phased out January 1, 2015.

F. Information Requested

This advance notice of proposed rulemaking invites public comment on the merits, advantages, and disadvantages of changing certain vessel reporting and participation requirements of the Buzzards Bay VMRS; Federal Pilots, not a member of the crew, on board tugs towing both single- and double-hulled tank barges; and Escort Tugs for double-hull tank barges during adverse conditions.

G. Preliminary Regulatory Analysis

This document is issued under authority of 5 U.S.C. 552(a) and 33 CFR 1.05-30.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The U.S. Supreme Court, in the cases of *United States v. Locke*, 529 U.S. 89 (2000) and *Ray v. Atlantic*

Richfield Co., 435 U.S. 151 (1978) has ruled that certain categories of regulation issued pursuant to the Ports and Waterways Safety Act of 1972, as amended, are reserved exclusively to the Coast Guard, and that State regulation in these areas is preempted. In general, only the federal government may regulate the design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of tank vessels. Similarly, where the Coast Guard enacts regulations that control vessel traffic or are otherwise intended to protect navigation and the marine environment, or affirmatively determines that such regulation is unnecessary or inappropriate, a State may not enact rules that conflict with the Coast Guard's determination in that area, including situations in which the State rules are identical to the federal rules.

As noted previously in our 2007 rulemaking (See 72 FR 50052), the Coast Guard believes that State law is preempted on the subjects discussed in this ANPRM, specifically with regard to the subjects of vessel routing, manning, and tug escort requirements in Buzzards Bay.

Nevertheless, the Coast Guard recognizes the key role State and local governments may have in making regulatory determinations. Sections 4 and 6 of Executive Order 13132

require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected State and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process.

Therefore, we invite affected State and local governments and their representative national organizations to indicate their desire for participation and consultation in this rulemaking process by submitting comments to this notice. In accordance with Executive Order 13132, the Coast Guard will provide a federalism impact statement to document (1) the extent of the Coast Guard's consultation with State and local officials

that submit comments to this advanced notice of proposed rulemaking, (2) a summary of the nature of any concerns raised by State or local governments and the Coast Guard's position thereon, and (3) the extent to which the concerns of State and local officials have been met. We will also report to the Office of Management and Budget any written communications with the States.

Dated: May 30, 2013

D. B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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